



Novel Coronavirus (COVID-19)

Construction Law

April 2020

Construction Lien Deadlines Not Suspended During COVID-19

By Kayla Kwinter

Following Ontario's recent Order suspending limitation and procedural time periods, there has been some uncertainty regarding whether liens in Ontario continue to expire in the ordinary course. The Attorney General has now confirmed that they do.

On March 20, 2020, the Ontario Government issued an Order under Subsection 7.1(2) of the *Emergency Management and Civil Protection Act* suspending limitation periods and procedural time periods in Ontario (the "Suspension Order"). It was initially unclear whether the Suspension Order applied to the timelines established under the *Construction Act*, formerly the *Construction Lien Act* (the "*Act*"). Many in the construction industry were concerned about the impact of the Suspension Order on the flow of funds on construction projects. If the Suspension Order had applied to lien periods, the holdback period established under the *Act* would not expire, and holdback funds could not be released. Undoubtedly this would have put significant financial strain on contractors during a time of financial uncertainty.

On April 9, 2020, the Attorney General for Ontario confirmed that the Suspension Order has been amended to clarify that it does not apply to limitation and procedural time periods under the *Act*. This means that liens must be preserved and perfected within the timelines set out in the *Act*. Liens that are not preserved or perfected will expire in the ordinary course. As a result, holdback can, and in some cases must, be released as provided for under the *Act*. Contractors should continue to apply for release of holdback as usual, and owners should continue to implement their ordinary procedures with respect to releasing holdback.

The amendment to the Suspension Order will not come into effect until April 16, 2020. This will give parties who may have declined to preserve or perfect a lien in reliance on the Order an opportunity to do so without consequence. If you have a lien that may have expired, or that will expire, between March 16, 2020 and April 16, 2020, speak to your lawyer to ensure that your rights are preserved.

If you have any questions about this, please do not hesitate to contact your **Torkin Manes Lawyer**.

For more information about dealing with COVID-19, please visit our COVID-19 Resource Center.

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